

WEST BOUNTIFUL CITY

ORDINANCE #339-12

AN ORDINANCE AMENDING TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE WEST BOUNTIFUL MUNICIPAL CODE BY INCLUDING CHAPTER 2.64, APPEALS, TO DEFINE THE ADMINISTRATIVE APPEALS PROCESS.

WHEREAS, the West Bountiful City Council recognizes the importance of establishing an appropriate procedure for non-land use appeals; and

WHEREAS, there is benefit to the citizens of the City to encourage administrative remedies instead of legal action; and

WHEREAS, the proposed changes designate authority and exclusive procedure, clarifying the timeline and responsibilities of the appeal process.

NOW, THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF WEST BOUNTIFUL CITY, UTAH, THAT TITLE 2, ADMINISTRATION AND PERSONNEL, BE AMENDED AS INDICATED IN ATTACHED EXHIBIT A.

This ordinance will become effective upon signing and posting.

Adopted this 17th day of January, 2012.

By: _____

Ken Romney, Mayor

Attest:

Heidi Voordeckers, City Recorder



Voting by the City Council:

Aye

Nay

Councilmember Ahlstrom

✓

Councilmember Preece

✓

Councilmember Bruhn

✓

Councilmember McKean

✓

Councilmember Tovey

ABSENT

Chapter 2.640 Appeals

Sections:

2.640.010 Scope and Purpose

2.640.020 Procedure

2.640.010 Scope and Purpose.

This chapter applies generally to any appeal from an administrative decision that is not otherwise provided for under the Municipal Code. It is intended to provide a procedure for the exhaustion of administrative remedies as required by applicable law where such procedure is not governed by other provisions of the Municipal Code, such as Titles 16 and 17. This chapter is not intended to create any rights of appeal or remedies that otherwise do not exist, or to affect any criminal proceeding.

2.640.020 Procedure.

A. Definitions. For purposes of this chapter:

“Administrative authority” means a person, board, commission, agency, or other body designated by ordinance or the city council to interpret or enforce the Municipal Code or act upon applications filed under the Municipal Code.

“Appeal authority” means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of an administrative authority.

B. Exclusive Procedure. Except as otherwise provided in the Municipal Code, any appeal from the decision of an administrative authority administering or interpreting an ordinance, or from a fee charged under the Municipal Code, may be made only in accordance with the provisions of this section. Only those decisions in which an administrative authority has applied an ordinance to a particular application, person, business or parcel or property may be appealed to the appeal authority.

C. Appeal Authority. The city council will serve as appeal authority for purposes of any appeal from a written decision of an administrative authority under this chapter. The appeal authority will respect the due process rights of each of the participants in the appeal proceedings.

D. Time of Appeal. Any person adversely affected by an administrative authority’s decision administering or interpreting an ordinance ~~must~~ may file a written notice of appeal with the city recorder within ten (10) days after the administrative authority’s written decision is issued. All appeal rights are waived if the notice of appeal is not filed within that time frame.

E. Notice of Appeal—Contents. The notice of appeal shall contain a brief statement of all alleged grounds for appeal, including every theory of relief the adversely affected party can raise

in district court, together with any supporting documentation and legal argument. The appellant waives Any ground, theory, or argument not raised in the notice of appeal. Unless the appeal authority orders otherwise for good cause, the appellant will be precluded from presenting as evidence at the appeal hearing any documents or other information that is not included in the notice of appeal ~~will be waived~~.

F. Response to Notice of Appeal. At its option, the city or any party opposing the appeal may file a written brief, together with any supporting documentation, responding to the notice of appeal prior to the appeal hearing. Failure to file a responsive brief or supporting documentation will not preclude the party from responding to the notice of appeal at the appeal hearing.

G. Burden of Proof. The appellant bears the burden of proving by a preponderance of the evidence that the administrative authority erred.

H. Standard of Review. The appeal authority shall determine the correctness of the administrative authority's decision ~~in its interpretation and application of~~ interpreting or applying an ordinance. The appeal authority shall review the evidence and arguments on appeal *de novo*, without deference to any findings or conclusions of the administrative authority. ~~The appeal authority shall presume that a decision, ordinance, or regulation made under the authority of the Municipal Code or other applicable law is valid; and determine only whether the decision, ordinance, or regulation is arbitrary, capricious, or illegal. A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the purposes of the applicable provisions of the Municipal Code, and is not otherwise illegal. A final decision of an administrative authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal. A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation was adopted.~~

I. Hearing on Appeal. The appeal authority will hear the appeal at a regular city council meeting, scheduled at the convenience of the council. The city will provide notice of the hearing to the appellant and any party that has filed a responsive brief. At the hearing, each party will be allowed a reasonable time, as determined by the appeal authority, to present evidence, by way of live testimony and documentary evidence (including affidavits), and arguments supporting the party's position. In the interest of fairness, the appeal authority, in its discretion, may continue the hearing to another city council meeting or allow the parties to file supplemental materials addressing any information raised at the hearing.

J. Final Decision. Following the hearing the appeal authority may affirm, reverse, affirm in part and reverse in part, or modify the decision of the administrative authority; or the appeal authority may remand the matter to the administrative authority for further proceedings. The written decision of the appeal authority constitutes a final decision and will be binding on all parties when issued.

K. Further Appeal. The city, a board or officer of the city, or any person adversely affected by the decision of the appeal authority may appeal to district court as provided by law.